

STATE OF NEW YORK
COUNTY OF SCHENECTADY

SUPREME COURT

MARY HARTSHORNE, KAREN BRADLEY,
PATRICIA CAULFIELD, COLLEEN DZIKAS,
KELVIN ISOLDA, LAURIE WASNISKI,
JEANETTE BEARZI, JERRY ADACH, KATHY
ADACH, JUANITA AIKENS-ENGLISH,
KATHLEEN ALMOND, MARY PAT
AMBROSINO, PATTI APA, DEBORAH
AVERY, MAUREEN BATTISTE, KATHLEEN
BENDER, BONNIE BENSON, NANCY
BILLSBORROW, REBECCA BILLSBORROW,
TIMOTHY BILLSBORROW, THOMAS
BILLSBORROW, CAROL BRADT, LAURIE
BRISKIE, KAREN BROWN, PATRICIA
BUTLER, DEBORAH MAUREEN
CAMPBELL, DEB CANARY, CATHERINE
CAREY, SUSAN CARUSONE, MARY
CIESZYNSKI, PAUL CIESZYNSKI, SANDY
CIVITELLO, ALICE CLARE, SHEILA
CRISTELLO, LYNN D'ALESSANDRIS,
DEBRA D'ANNUNZIO, ANN MARIE DAVID,
CATHY-JO DEAMER, REBECCA DEBLASE,
JAMES DEGROFF, KAREN B. DICKSON,
DEBORAH ELLIOTT, GINA FAUCETT,
WILLIAM FENNICKS, STEPHEN FISHEL,
PATRICIA FLACKE, BRIAN FORGET,
DEBORAH GIAKOUMIS, SUZEN GOLDEN,
KAREN GRIFFIN, RICHARD P. HAHN, JOAN
HAM, JOHN HAM, RANDAL HERBERT,
SHARON HOFFMAN, ANNE HOTALING,
FRANK HOULIHAN, MARY HOULIHAN,
LAURA MAE HUGGETT, NANCY HUNTER,
PETER JONES, LOUANN KEAST, MAUREEN
A. KENNEDY, PEGGY KILINSKI, MARK
KLINE, BARBARA LAHEY, LESLIE LASTRA,
MARC MARCHAND, DEBORAH MARK,
RICHARD MARK, MELINDA MARTIN, GINA
MARTINELLI-PAINTER, ELAINE MASI,
DIANE MAURO, DEBORAH MCDONALD,
GERALD MCGINNIS, SUE MCKINNEY,
TARA MEANEY, JUDITH MEISNER,

COMPLAINT

INDEX NO: 2019-1989

FILED
09/30/2019 10:04:18 AM
Clerk
County of Schenectady
Schenectady County, NY
Index No: 20190145

ANGELA MICZEK, LEVERN MOSIER,
PATRICIA MOTYL, JEAN NEALON, ANNE
NOLAN, MELISSA O'CLAIR, DIANE
O'CONNOR, PATRICK O'HANLON, TINA
O'HANLON, MARIANNE L. OSTRANDER,
MARY PAGANO, PATRICIA PANGBURN,
MARTHA PARASZCZAK, JUDY PATRICK,
MARIA PEART, JOANNE PELLETIER, JANET
PLOURDE, BARBARA POWERS, LOUIS
PIETROCARLO, LINDA PUSZ, WENDY
QUAY, CHRIS RAKUS, ERICA REGAN,
JANET RIZZO, JOHN RIZZO, KATHLEEN
RUBIN, KAREN SACCHETTI, MARIA
SACCO, JOSEPH SACCO, DAVID
SCHAPERJAHN, BARBARA SCHWANT,
PATRICIA SEVERINO, KATHRYN SEWARD,
LEE SHELDON, MICHAEL SPINA, RANDY
STARK, SHERRY STARK, JOYCE
STASCHAK, ANGELA STEWART, DOREEN
STURGEON, MARYBETH SULLIVAN, MARY
TABER, KATHLEEN TALASCO, ANN
TESTA, JOSEPH TESTA, DIANE VAKIENER,
LINDA VINCENT, DONNA VOTION,
CYNTHIA WATROBA, BARBARA
YANKOWSKI, LORI A. ZAMPELLA,
SUZANNE ZARILLO, and FREDERICK
ZIEMANN,

Plaintiffs,

v.

THE ROMAN CATHOLIC DIOCESE OF
ALBANY, NEW YORK;

ST. CLARE'S CORPORATION (FORMERLY
KNOWN AS ST. CLARE'S HOSPITAL OF
SCHENECTADY, N.Y.);

ST. CLARE'S HOSPITAL RETIREMENT
INCOME PLAN;

BOARD OF TRUSTEES OF ST. CLARE'S
RETIREMENT INCOME PLAN TRUST;

JOSEPH F. POFIT;
ROBERT PERRY;
BISHOP EDWARD B. SCHARFENBERGER;
and,
BISHOP HOWARD HUBBARD,

Defendants.

I. PRELIMINARY STATEMENT

1. This action is brought by a group of former nurses, orderlies, laboratory technicians, clerical and housekeeping staff, and others who worked for years—in many cases, decades—at St. Clare’s Hospital of Schenectady, New York (the “Hospital” or “Corporation”), a part of the Roman Catholic Diocese of Albany (the “Diocese”).

2. In exchange for their services, Defendants promised Plaintiffs that when they retired, they would receive a pension that would permit them to live the remaining years of their lives decently and with a modicum of comfort. Relying on that promise, Plaintiffs continued to work at the Hospital before it closed. They fulfilled all their work duties and ultimately met all the requisites to receive a monthly pension at retirement.

3. On October 11, 2018, Defendants announced that they would not keep their promise. They informed Plaintiffs that most of them would not receive their pensions and that the remaining Plaintiffs’ pensions would be drastically reduced.

4. Defendants claim they are unable to pay the pensions, but they have failed to provide any other explanation of their failure to keep their promises to Plaintiffs or a credible

account of the disposition of the \$28.5 million in public funds provided by the State of New York to the pension fund when the Hospital closed.

5. On or about March 26, 2019, the Board of Directors of St. Clare's Corporation filed in this Court a petition for the Corporation's dissolution.

6. The Attorney General has refused to consent to the petition and has requested that the Petitioners provide all relevant documents and produce two of the Corporation's officers for depositions.

7. Meanwhile, Plaintiffs face continuing and increasing hardship due to the loss of pension income. They are left with no alternative but to file the present suit for breach of contract, promissory estoppel, and breach of fiduciary duty.

II. VENUE

8. Venue is proper in this county pursuant to CPLR § 503(a), because some of the breaches for which relief is sought occurred in this county and a substantial part of the events or omissions giving rise to the claims asserted herein occurred within this county.

III. PARTIES

A. Plaintiffs

9. Plaintiffs are former employees of the Hospital, all of whom are fully vested and in all other respects eligible to receive the full amount of the promised pensions either now or upon reaching age sixty-five.

10. Since February 1, 2019, several Plaintiffs have received only 70% of their promised pensions because they attained the age of 62 by November 1, 2015, an age and cutoff date unilaterally imposed by Defendants. They are: Mary Hartshorne, Kelvin Isolda, Mary Pat Ambrosino, Karen Bradley, Karen Brown, Patricia Caulfield, Alice Clare, Colleen Dzikas,

Laurie Wasniski, Timothy Billsborrow, Nancy Billsborrow, Rebecca Billsborrow, Laurie Briskie, Hillary Buono, Mary Cieszynski, Paul Cieszynski, Gary Dunkerley, Nancy Hunter, Peter Jones, Deborah Mark, Melinda Martin, Elaine Masi, Judith Meisner, Mary Pagano, Judy Patrick, Joanne Pelletier, Janet Plourde, Chris Rakus, David Schaperjahn, Barbara Schwant, Kathryn Seward, Doreen Sturgeon, Donna Votion, Barbara Yankowski, and Frederick Ziemann.

11. The remaining Plaintiffs did not attain the age of sixty-two by the unilaterally imposed cutoff date and are therefore slated to receive no pension whatsoever. They are: Jeanette Bearzi, Jerry Adach, Kathy Adach, Juanity Aikens-English, Kathleen Almond, Patti Apa, Deborah Avery, Maureen Battiste, Kathleen Bender, Bonnie Benson, Thomas Billsborrows, Carol Bradt, Patricia Butler, Maureen Campbell, Patricia Campoli, Deborah Canary, Catherine Carey, Susan Carusone, Theresa Cassella, Laura Chotskowski, Sandy Civitello, Sheila Cristello, Lynn D'Alessandris, Debra D'Annunzio, Ann Marie David, Cathy-Jo Deamer, Rebecca DeBaise, James DeGroff, Deborah Elliott, Gina Faucett, William Fennicks, Stephen Fishel, Patricia Flacke, Brian Forget, Deborah Giakoumis, Suzen Golden, Karen Griffin, Richard P. Hahn, Joan Ham, John Ham, Randal Herbert, Sharon Hoffman, Anne Hotaling, Frank Houlihan, Mary Houlihan, Laura Mae Huggett, Louann Keast, Maureen Kennedy, Peggy Kilinski, Mark Kline, Barbara Lahey, Leslie Lastra, Tara Meaney, Marc Marchand, Richard Mark, Gina Martinelli-Painter, Diane Mauro, Deborah McDonald, Gerald McGinnis, Sue McKinney, Angela Miczek, Levern Mosier, Patricia Motyl, Jean Nealon, Anne Nolan, Melissa O'Clair, Diane O'Connor, Patrick O'Hanlon, Tina O'Hanlon, Patricia Pangburn, Martha Paraszczak, Maria Peart, Barbara Powers, Lou Pietrocarlo, Linda Pusz, Wendy Quay, Erica Regan, Janet Rizzo, John Rizzo, Kathleen Rubin, Karen Sacchetti, Joseph Sacco, Maria Sacco, Patricia Severino, John Shakeshaft, Beth Sheedy, Patrice Sheehan, Lee Sheldon, Michael Spina, Randy Stark,

Sherry Stark, Joyce Staschak, Angela Stewart, Marybeth Sullivan, Mary Taber, Kathleen Talasco, Ann Testa, Joseph Testa, Diane Vakiener, Linda Vincent, Adriane Walrath, Cynthia Watroba, Lori Zampella, and Suzanne Zarillo.

B. Defendants

12. Defendant Roman Catholic Diocese of Albany, through the Bishop of Albany, is the supreme Roman Catholic governing authority in the fourteen counties located in Northeastern New York, including the county of Schenectady.

13. The principal offices of the Diocese are located at 40 North Main Avenue, Albany, New York 12203.

14. The Diocese is the original sponsor of St. Clare's Corporation, formerly known as St. Clare's Hospital of Schenectady, New York. The Diocese donated the land on which the Hospital was built.

15. Defendant Scharfenberger has been the Roman Catholic Bishop of Albany since February 11, 2014.

16. Defendant Hubbard was Defendant Scharfenberger's predecessor and served from March 27, 1977, until February 11, 2014.

17. During the relevant time period, Defendant Hubbard's principal offices were the same as those for the diocese: 40 North Main Avenue, Albany, New York 12203.

18. While every parish within the Diocese is formed as a separate religious corporation, the Bishop serves as President of all these corporations.¹

¹ Roman Catholic Diocese of Albany, "Parish Policies and Procedures" at 1, available at https://www.rcda.org/application/files/5715/5137/4663/Parish_Policies_and_Procedures_Manual_Including_Appendices.pdf (last accessed Sept. 2, 2019).

19. Defendant St. Clare's Corporation is a not-for-profit corporation, incorporated in New York under the Not-For Profit Corporation Law.

20. The Corporation operated St. Clare's Hospital until it closed in June 2008. The Corporation's principal office, like those of Defendants the Diocese and Bishop Scharfenberger, is located at 40 North Main Avenue, Albany, New York 12203.

21. The Diocese has operated the Corporation from the Diocesan office at least since the Hospital closed.

22. The Diocese controls the Corporation through a variety of means, including but not limited to its influence over the Corporation's Board of Directors. Pursuant to the Corporation's bylaws, the Bishop of the Diocese is the "Automatic Director" of the Corporation's Board of Directors throughout his tenure as Bishop. The Bishop appoints at least four directors and may remove them at any time. The Board elects the remaining directors, but on information and belief, the Bishop has approved the selection of the elected directors at all relevant times.

23. Upon information and belief, since the inception of the St. Clare's Hospital Retirement Income Plan ("the Plan") in 1959, the Corporation has managed its day-to-day operations by and through its boards of directors, officers, employees, and other delegates. Throughout that same period, because of the control exerted by the Diocese through the Bishop, the Diocese has made all major decisions affecting the rights and benefits of the Plan's participants.

24. As made clear in its organizational chart (attached as Exhibit A), the Corporation's Board of Directors is subordinate to the Diocese. On information and belief, this chart was the official organizational chart for the Hospital at all relevant times.

25. For many years, the Corporation was listed in the Official Catholic Directory. As several courts have noted, an organization may only be listed in this Directory if a bishop of the Roman Catholic Church determines that it is “operated, supervised, or controlled by or in association with the Roman Catholic Church.” *Overall v. Ascension*, 23 F.Supp.3d 816, 831 (E.D. Mich. 2014). The *Ascension* court further pointed out that “[c]ourts view the Official Catholic Directory listing as a public declaration by the Roman Catholic Church that an organization is associated with the Church.” *Id.* (internal citations omitted).

26. In 2005, a separate directory published by the Diocese of Albany included a listing for the Corporation and referred to the Diocese as the co-founder of the Hospital.

27. Each member of the Corporation’s Board of Directors, other than the Bishops, also served as a Trustee of the St. Clare’s Hospital Retirement Income Plan Trust (“the Trust”), which was created in 2009 to hold Plan assets on behalf of participants. These Trustees, together, form Defendant the Board of Trustees of St. Clare’s Hospital Retirement Income Plan Trust.

28. Defendant Robert Perry was Chief Executive Officer and President of the Hospital’s Board of Directors from 2005 until 2007.

29. Defendant Joseph F. Pofit has been chairman and president of the St. Clare’s Corporation Board of Directors since June 2008 and director since 2007. Mr. Pofit is or was also an employee of the Diocese. He explained under oath in 2012 that his duties at the Diocese included serving as a liaison to Catholic hospitals and other healthcare facilities on behalf of the bishop. Mr. Pofit’s principal office, like those of the Diocese and the Bishops, is or was located at 40 North Main Avenue, Albany, New York 12203.

30. Defendant St. Clare’s Retirement Income Plan (“The Plan”) is named for complete relief.

IV. RELATED PENDING PROCEEDING

31. On March 22, 2019, Mr. Pofit and the other Directors of the Corporation filed a verified petition for dissolution in this court pursuant to Article 11 of the Not-for-Profit Corporation Law. The matter, index number 2019-653, has been assigned to the Honorable Vincent W. Versaci.

32. The Petition states that the Corporation has no assets and that it “has made every reasonable effort to secure additional operating funds but has been unsuccessful, and there is no likelihood that the required financial resources can be obtained.”

33. The Petition also states:

[T]he sole creditor of the corporation is the St. Clare’s Hospital Retirement Income Plan (the “Plan”). The nature of the obligation owed to the Plan is employer contributions necessary to pay benefits to former employees of the corporation in accordance with the terms of the Plan. The initial date of the corporation’s obligation to the Plan is October 1, 1959. The amount of the obligation has varied from year to year as the number, ages, accrued benefits, and benefit payments to participants have changed, and as the corporation has made contributions to the Plan. **The amount currently estimated to be due by the corporation to the Plan is \$53,500,000. [T]he corporation’s obligation to the Plan is just and valid, with respect to which the Corporation has no counterclaims or offsets.**

(Petition, ¶ 9 (emphasis added).)

34. In its answer, the Plan claimed a lack of knowledge as to most of the allegations but admitted “that it is a creditor of St. Clare’s Corporation,” and “acknowledge[d] that the Corporation made a contribution to the Plan in January 2019 in the amount of \$505,321 and that the amount currently estimated to be due by the Corporation to the Plan is \$52,994,679.”

35. The Attorney General has objected to the dissolution and moved for leave to conduct discovery pursuant to CPLR § 408, seeking all relevant documents and the testimony of two key witnesses. In her motion papers, the Attorney General observed:

This is no routine dissolution case. The directors and officers of the Corporation and the Plan undertook the responsibility for management and payment of the earned and promised pensions of a reported 1,100 former employees of the Corporation. For the majority of those former employees, no pension will ever be paid. For a smaller number, they will receive only a percentage of the promised amounts."

(Reply Mem. in Supp. of Mot. of Attorney General for Disclosure Under Rule 408 at 1 ("Reply Mem.").)

36. Meanwhile, Plaintiffs Karen Bradley, Kelvin Isolda, and Laurie Wasniski have appeared in the proceeding in their capacity as creditors of the pension fund. On July 1, 2019 Ms. Bradley moved to remove the current trustees of the Plan. In an affidavit submitted in support of her motion, she noted that "the Directors of the Corporation find themselves in an insolvable conflict of interest whereby they have a fiduciary obligation to the debtor Corporation and at the same time a fiduciary obligation to her creditor trust." (Affidavit of Karen Bradley In Support of Motion Seeking Removal of Trustees, at ¶ 9.)

37. At the conclusion of her memorandum, the Attorney General expressed her agreement regarding the conflict of interest, while pointing to another possible conflict:

As directors of a not-for-profit charitable corporation, they each have a duty to ensure that mission of the charitable corporation is carried out. This duty has been referred to as the duty of obedience. Prior to June 2008, the directors were to assure that the corporation 'at all times in conformance with Canon Law of the Roman Catholic Church. After that time they were to act in a manner consistent with Catholic doctrine, including the Catholic Church's emphasis on workers' rights."

(Reply Mem. 10-11 (citations and footnote omitted).)

38. In a September 3, 2019 filing supporting Ms. Bradley's motion, the Attorney General noted that in October 2017 the Directors of the Corporation acknowledged that the Plan was underfunded by approximately \$35.5 million. (Affirmation of James Sheehan in Support of Motion of Karen Bradley at ¶43; Exhibit E to Sheehan Affirmation.)

39. The Attorney General further noted that the Directors unanimously passed a resolution directing counsel to notify the Internal Revenue Service (IRS) and the Pension Benefit Guaranty Corporation (PBGC) that the Plan elected ERISA, effective January 1, 2018. (Sheehan Aff. at ¶42; Exh. E to Sheehan Aff.)

40. One board member, according to the Attorney General's filing, changed his vote for reasons that are not clear from the heavily redacted minutes, but which seem to have been related to the risk of litigation against the Board. (Sheehan Aff. at ¶46; Exh. F. to Sheehan Aff.) No other board members appear to have changed their votes. *Id.*

41. Upon information and belief, the Board never elected ERISA or reinstated coverage, and as a result Plaintiffs' retirement funds were unprotected and uninsured when the Board terminated the Plan.

42. As of the date of the filing of this Complaint, the dissolution proceeding and various related motions are still pending.

V. THE APPLICABLE LAW AND PLAN DOCUMENTS

43. Consistent with Section 198-c of the New York Labor Law, under which pensions are not a gratuity but "wage supplements," participants may enforce their right to promised retirement benefits in the courts of the state, under the principles of contract and trust law.

44. To establish a breach of contract claim under New York law, Plaintiffs must show "(1) formation of a contract between plaintiff and defendant; (2) performance by plaintiff; (3) defendant's failure to perform; and (4) resulting damage." *Clearmont Prop., LLC v. Eisner*, 58 A.D.3d 1052, 1055 (3rd Dep't 2009) (citation omitted)

45. To establish a quasi-contract or promissory estoppel claim under New York law, plaintiffs must show “(1) a clear and unambiguous promise, (2) reasonable and foreseeable reliance by the party to whom the promise is made, and (3) an injury sustained in reliance on the promise.” *Fleet Bank v. Pine Knoll Corp.*, 290 A.D. 2d 792, 797 (3rd Dep’t 2002) (citations omitted).

46. To establish a breach of fiduciary duty claim, plaintiffs must show that: (1) a special relationship of trust was established with the defendants for their benefit; (2) defendants breached a duty ensured by that trust; and (3) they sustained injury because of that breach. *Northeast Gen. Corp. v. Wellington Adv.*, 82 N.Y.2d 158, 160-62 (1993).

47. A fiduciary relationship “exists between two persons when one of them is under a duty to act for or to give advice for the benefit of another upon matters within the scope of the relation.” *EBC I, Inc. v. Goldman Sachs & Co.*, 5 N.Y.3d 11, 19 (2005). In addition to the duties imposed by the Plan and Trust documents themselves, fiduciaries such as Defendants have the duty to act prudently, loyally, and honestly in the interests of the beneficiaries such as the plaintiffs. *See generally* Restatement 2d of Trusts, § 2.

48. In *Meinhard v. Salmon*, Chief Judge (later Justice) Cardozo explicated the standard of loyalty, under New York law, to which fiduciaries are subject:

Many forms of conduct permissible in a workaday world for those acting at arm’s length, are forbidden to those bound by fiduciary ties. A trustee is held to something stricter than the morals of the market place. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior. As to this there has developed a tradition that is unbending and inveterate. Uncompromising rigidity has been the attitude of courts of equity when petitioned to undermine the rule of undivided loyalty by the “disintegrating erosion” of particular exceptions (*Wendt v. Fischer*, 243 N. Y. 439, 444). Only thus has the level of conduct for fiduciaries been kept at a level higher than that trodden by the crowd. It will not consciously be lowered by any judgment of this court.

249 N.Y. 458, 463 (1928)

49. The Plan documents bind Defendants to promises pertaining to plan participation, (Plan Article IV), vesting, (*id.* Article VII), commencement of benefit payments, (*see id.* Article IX), plan funding, (Summary Plan Description for St. Clare's Hospital Retirement Income Plan (Rev. Oct. 2005) ("SPD") at 21), fiduciary duty (Trust Agreement § 2.2; Plan § 5), and amendment of the plan and protection of accrued benefits from being diminished. (Plan § 16.1).

50. Furthermore, in the SPD issued several years after the Plan was deemed a church plan, Defendants represented to Plaintiff that the Plan remained guaranteed by PBGC. Thus, the SPD states that, "[i]f for any reason the Plan should terminate you may lose part of your Plan Benefit if it exceeds the limit guaranteed by the [PBGC]." SPD at 18.

51. Defendants further stated in the SPD that "[o]ngoing contributions to provide this benefit to you are made to a fund held by Connecticut General Life Insurance Company." SPD at 21.

52. The Trust Agreement and all versions of the Plan document and plan summaries affirm that the Trustees must administer the Plan solely in the interest of the Plan's participants and beneficiaries. Trust Agreement § 2.2; Plan § 5; SPD (rev. Oct. 2005). The Preamble to the Plan document provides that the Plan "is maintained for the exclusive benefit of eligible employees and their beneficiaries," and the Trust Agreement provides that the Trustees shall exercise their powers thereunder "for the exclusive benefit of the Beneficiaries of the Trust and the purposes hereof."

53. The Plan expressly requires Defendants to carry out their fiduciary obligations by exercising good faith, applying standards of uniform application, and refraining from arbitrary action. (Plan § 14.1)

54. Defendants reserve their right to amend the Plan but state explicitly that no amendment may diminish accrued benefits:

No pension or other benefit granted prior to the time of any amendment or modification of the Plan shall be reduced, suspended, or discontinued as a result thereof, except to the extent necessary to enable the Plan to meet the requirements for qualification under the Code or the requirements of any governmental authority.

Plan § 16.1

55. Likewise, the SPD states:

While the Employer fully intends to continue the Plan indefinitely, it does reserve the right to modify, suspend, or terminate the Plan at any time. *However, no modification, suspension or termination of the Plan may reduce any Plan Benefits you have already accrued. Should the Plan be terminated, you will not earn any additional benefits, but you will be 100% vested in your Accrued Plan Benefit at the time of the Plan's termination.* The assets of the Plan will be allocated to provide all Accrued Plan Benefits and meet any other legal requirements.

SPD at 21.

56. As discussed further *infra*, the Plan has been deemed a "church plan" exempt from ERISA's requirements. See 29 U.S.C. § 1144 (a). Therefore, ERISA does not preempt New York State law regarding the Plan. Plaintiffs are entitled to vindicate their rights pursuant to state law.

V. FACTS

A. **The Diocese Created the Plan, Has Controlled It Since Its Inception, and Obtained a Ruling That It Was a "Church Plan" in Order to Exempt It from the Safeguards Provided by ERISA.**

57. The Diocese donated land for the Hospital, and all members of the original corporate board were associated with the Diocese, including Bishop Gibbons, president; Mother M. Simon Petra, provincial head of the Sisters of the Poor of St. Francis, vice-president; Father

Keane, secretary; the Rev. Leo B. Schmidt, pastor of St. Joseph's church, treasurer; Sister Juliana, assistant treasurer, and Sisters Bonaventure, Auxentia, Seraphim and Maria, OSF.

58. As discussed in detail in III.B, *supra*, the Corporation was part of the Diocese from its founding onward. The Diocese has significant influence over the Corporation's Board of Directors through the Bishop's automatic appointment as director and his control over other directors' appointments. The Hospital's organizational chart shows the Hospital's Board of Trustees reporting directly to the Diocese, and the Corporation is listed in the Catholic Directory for the relevant time period. Most relevant here, Diocesan employees, including but not limited to the Bishop, made all major decisions affecting the rights and benefits of the Plan's participants.

59. The Diocese, through its agents, established the Plan effective October 1, 1959.

60. Plaintiffs accepted relatively low wages with the understanding that they would be compensated for by the payment of a pension when they retired.

61. From sometime in or about 1974 until sometime in or about 1992, the Diocese and the Corporation assumed the Plan to be subject to the Employee Retirement Income Security Act of 1974 as amended ("ERISA"), 29 U.S.C. §§ 1001, *et seq.*

62. Upon information and belief, in or about 1992 the Diocese caused the Hospital to secure a letter ruling from the Internal Revenue Service that the Plan was a "church plan" and thus exempt from ERISA. As most pertinent here, the 1992 ruling exempted the Plan from ERISA's minimum funding requirements and from the obligation to pay into the PBGC insurance program.

63. After the Hospital received that ruling, it entered into a settlement with the PBGC for a refund of approximately \$88,000 in pension insurance premiums because, as a non-ERISA-

covered entity, it was not required to have pension insurance. The initial settlement agreement was between only the Corporation and the PBGC. After significant discussion, however, the parties determined that the Diocese was a necessary signatory. In 1995, Defendant Hubbard, at the time the Bishop of the Diocese of Albany and, thus, the Automatic Director of the Corporation's Board, signed the settlement on behalf of the Diocese.

B. Defendants Underfunded the Plan While Simultaneously and Repeatedly Reassuring Plan Participants that They Would Receive Retirement Benefits.

64. Starting in or about 1998, there were several years wherein the Corporation made nominal or no contributions to the Plan.

65. In 2005, Defendants amended the Plan to "freeze" it effective February 1, 2006, meaning that after that date participants would not accrue any additional years of service for benefit calculation purposes. In a December 14, 2005 letter, Defendants informed the Hospital's employees about this change. While the letter specified that employees whose pension rights had not already vested would not be able to participate in the Plan and would accrue no further credit for their service to the Corporation, it reassured the Plan participants that *as long as they were vested when they left the Hospital, they would receive their pension benefit.*

66. Each Plaintiff's pension had vested before the Hospital closed.

67. The pensions of participants who retired after November 1, 2005 were not guaranteed by any insurance policy.

68. On July 12, 2007, less than a year before the Hospital closed, Defendant Perry, who was then the Corporation's President and CEO, wrote a letter explaining that the Plan was and for some time had been underfunded. However, the letter went on to state that the underfunding was "*not an emergency and we have time to find a way to fix the problem.*" Mr. Perry also wrote, "[a]s always, I will promise to tell you the truth and do everything in my power

to make it right.” Defendants thereby indicated that they would ensure that the Plan was fully funded so that Plaintiffs would receive their entire accrued and vested benefits at the time they retired.

C. The Hospital Closed and Defendants Misleadingly Assured Participants that with Money from the State and Participant Sacrifices, the Plan Was On A Secure Footing.

69. In 2005 and 2006, the Commission on Health Care Facilities in the Twenty-First Century, popularly known as the Berger Commission, was tasked with finding ways to streamline the health care system within New York State. The Commission conducted a study on the health delivery options throughout the state and made several recommendations based on its findings. While the Commission initially recommended that the Hospital remain open, its final recommendation was that the Hospital should merge with Ellis.²

70. On February 25, 2008, while this process was ongoing, Mr. Perry sent another letter to all employees explaining that the Plan as it stood would not be able to pay all promised benefits to all participants. Mr. Perry stated that the Board had considered terminating the Plan immediately, but that it believed doing so would adversely affect people nearing retirement age. He also stated that instead the Board had decided to amend the Plan to increase both the normal and early retirement ages and to eliminate the option to collect reduced benefits at age fifty-five.

² Compare Commission Public Health Care Facilities in the Twentieth Century Final Report of the Commission Public Health Care Facilities in the Twentieth Century 182-185 (1986) [available at <https://nyhealthcarecommission.health.ny.gov/docs/final/commissionfinalreport.pdf>]; with New York Department of State, Report on Implementation of the Final Report of the Commission Public Health Care Facilities in the Twentieth Century 62-63 [Available at https://www.health.ny.gov/facilities/commission/docs/implementation_of_the_report_of_the_commission.pdf].

71. Perry represented that this amendment would “go[] the furthest in protecting people’s pension income when they need it the most—after they stop working[.]” In addition, the letter enclosed a “Pension Fact Sheet” stating that the funding shortfall had required the Corporation “to increase the plan’s retirement age to match that of Social Security *in order to fully fund the pension.*” (emphasis added).

72. Thus, Defendants conveyed that the Plan would be fully funded as a result of this change. Although Plaintiffs had to make sacrifices like forgoing early retirement and receiving benefits at the promised retirement age, Defendants represented that Plaintiffs would receive their full accrued and vested pension benefit when they were able to retire.

73. In June 2008, St. Clare’s surrendered its license, closed, and transferred its assets to Ellis Hospital for \$1.00.

74. St. Clare’s Hospital Foundation, an entity related to the Diocese and Corporation, paid a fee of \$41,000 to the Vatican for the “privilege of having the – the Catholic authorities in Rome approve the Asset Transfer Agreement [between Ellis and the Hospital].”

75. As part of the closure, the Hospital sought funding from the state that Plaintiffs believed would fund the Plan fully.

76. However, in a letter sent to the court in the dissolution proceeding referenced *supra*, counsel for the Corporation and the Plan represented that the Corporation had sought \$47 million to fund the Plan fully and that the underfunding and subsequent termination of the Plan was because the state had only funded the Plan in the amount of \$28.5 million. An undated portion of a state grant application requesting \$47 million was attached to the letter.

77. In July 2008, the New York State Department of Health made a wire transfer of \$28.5 million to the Plan.

78. On November 4, 2009, Mr. Pofit wrote to the Plan participants, including Plaintiffs, stating in pertinent part, "Please be assured that the Plan remains in full force and effect." Through this letter, Defendants communicated once again that Plaintiffs were guaranteed to receive their entire vested and accrued benefit upon retirement.

D. Defendants Continued to Mismanage Plan Assets and Decided to Reduce or Eliminate Benefits While Misinforming Participants about Funding.

79. From at least 2010 through 2017, Defendants sent letters to Plan participants on the Corporation's letterhead regarding the Plan's assets.

80. In a letter dated December 2, 2015, Defendants stated that during 2014, the amount of Plan underfunding had increased from \$13,828,887 to \$32,824,838. The letter stated that most of this massive increase "results from a change in certain assumptions made by the Plan's Actuary to value benefits and assets, including assumed lower investment returns that reflect the Plan's more conservative investment strategy."

81. At no point did the December 2, 2015, letter state that Plan participants would not receive their full benefit.

82. On October 11, 2016, Defendants, for the first time, notified Plaintiffs that the Plan would run out of funds and would be unable to pay benefits. The letter indicated that this would occur between 2024 and 2028.

83. Through the October 2016 letter, Defendants told Plaintiffs that their pension benefits would be terminated in eight to twelve years but that they were guaranteed their entire vested and accrued benefit until that time.

84. On July 27, 2017, Defendants sent a similar letter to participants, this one stating that "[t]he Plan's actuaries have estimated that the Plan will exhaust its assets in 2025 or 2026." As in the October 2016 letter, Defendants told Plaintiffs that while their pension benefits would

be terminated in eight to nine years, they were guaranteed their entire vested and accrued benefit until that time.

85. The July 27, 2017, letter attached a letter from the Corporation dated March 15, 2017. That letter, signed by Mr. Pofit, represented that Milliman had calculated the \$28.5 million figure that was ultimately far short of what was needed to fund the Plan.

86. As more fully discussed *supra*, it appears that the Board intended and indeed voted in October 2017 to elect ERISA coverage in order to protect the retirees' pensions. However, it ultimately failed to reinstate that coverage.

87. On October 11, 2018, the Corporation abruptly notified Plaintiffs that the Plan would be terminated on November 1, 2018. Plan participants who had attained the age of 62 by November 1, 2015 would have their payments reduced to 70% of their promised benefits as of February 1, 2019. Plan participants who had not attained the age of 62 by November 1, 2015 would receive nothing, regardless of how many years they had worked for the Hospital.

88. Even though the Plan by its own terms did not allow amendments which would affect accrued benefits, the Corporation amended and terminated the Plan on November 1, 2018, reducing or terminating Plaintiffs' benefits.

89. At no time has the Corporation stated or otherwise alleged that this amendment and termination was necessary to meet any other legal obligation or to fulfill any government-required duty.

90. Upon information and belief, in November 2018, the Plan had assets of approximately \$29 million. The present value of its liabilities to participants was estimated at \$84.3 million, resulting in a deficit of approximately \$55 million. Under the termination, approximately 440 participants who were already receiving pensions will receive payments for

life at about 70 percent of the promised level. Approximately 661 participants will not receive any of the promised benefits.

V. CLAIMS FOR RELIEF

Count I: Breach of Contract

91. This Count asserts a claim for breach of contract against the Corporation, the Diocese, and the Plan. Because the Diocese controls the Corporation, the Diocese is liable for the Corporation's breach of contract.

92. Defendants' written statements promising defined pension benefits under the Plan were part of a valid and binding employment contract. Plaintiffs agreed to work for Defendants at St. Clare's Hospital. Defendants, for their part, agreed to pay Plaintiffs wages or salaries and also agreed to pay them pension benefits upon their retirement, on the sole condition that they had accrued enough service.

93. The Plan documents, including the SPDs, created additional express terms of the contract between the Defendants and each participant and beneficiary of the Plan.

94. The Plan expressly states that the Corporation may not amend or modify the Plan in a way that would reduce, suspend, or discontinue any pension or other benefit granted before that amendment. Defendants knowingly violated this provision when they amended the Plan to reduce accrued benefits, as described in paragraphs 70 through 72 above.

95. Through the Plan document and SPDs, Defendants also agreed to determine and pay sufficient contributions to the Plan so that it could pay the promised benefits to Plaintiffs and the other participants. This term was implied in fact and law by the Plan documents, including but not limited to the 2000 Plan and the 2005 SPD.

96. Through the Plan document and SPDs, Defendants promised to adhere to ERISA's standards for qualified plans and to guarantee benefits up to PBGC's limit, even after they had opted out of ERISA coverage and PBGC insurance.

97. Plaintiffs and the other Plan participants accepted the contract terms described above and provided consideration by working for Defendants and earning and accruing at least five years of service in the Plan.

98. Plaintiffs and the other participants therefore satisfied the conditions precedent for Defendants' duty to pay the Plan and, ultimately, to pay them benefits in the promised amount.

99. Defendants breached the contract by:

- a. failing to fund and then terminating the Plan;
- b. halting, reducing, and/or repudiating payment of pension benefits to

Plaintiffs and the other participants;

c. purporting to reduce accrued benefits in violation of the express terms of the Plan;

d. failing to adhere to ERISA's funding standards; and

e. failing to guarantee benefits up to PBGC's limit.

100. Defendants' breach of their contract with Plaintiffs and the other Plan participants directly caused and continues to cause them substantial damages, for which Defendants are liable to Plaintiffs.

Count II: Promissory Estoppel

101. This Count asserts a claim for promissory estoppel against the Corporation, the Diocese, and the Plan.

102. Defendants, through the Plan and SPD provisions described *supra* and listed as employment contract provisions in Count 1, promised Plaintiffs and the other Plan participants that if they accrued five years of service at St. Clare's Hospital, their pensions would vest and they would receive benefits upon retirement.

103. Those terms were communicated to Plaintiffs and the other participants through summary plan descriptions, annual benefit statements, other generally distributed documents, and correspondence and oral communications.

104. Defendants had a duty to fund the Plan sufficiently so that it could pay the promised benefits. This term was implied in fact and law by the Plan documents, including but not limited to the 2000 Plan and the 2005 SPD.

105. Defendants knew or reasonably should have known that Plaintiffs would continue to work there in reliance on the promised pension benefit.

106. Plaintiffs continued their employment at St. Clare's Hospital in the full and reasonable expectation that they would receive the promised benefits. In so doing, they relied to their detriment on Defendants' promise to pay those benefits.

107. Defendants have now broken their promises to Plaintiffs by reducing their pensions or by stopping the payments altogether.

108. Plaintiffs trusted the Corporation to keep its promises in part because they perceived, believed, and understood that it was affiliated with the Diocese. Plaintiffs made decisions affecting their lives in reasonable reliance on the assumption that they would receive their pensions.

109. Defendants' failure and refusal to keep their promises have harmed and continue to harm Plaintiffs.

110. The Corporation and the Diocese are jointly and severally liable to Plaintiffs for the damages caused by their failure and refusal to abide by their promises.

COUNT III: Breach of Fiduciary Duty by All Defendants

111. The Plan assets were held in trust for the sole benefit of the Plan participants.

112. Plaintiffs are plan participants and thus beneficiaries of the Plan Trust.

113. Pursuant to the Plan documents, Defendants are named fiduciaries and/or de facto fiduciaries with respect to the Plan.

114. As fiduciaries to the Plan, Defendants owe and owed Plaintiffs:

a. Duties of loyalty, exclusivity of purpose, and prudence, including management of the plan for the sole and exclusive benefit of the beneficiaries;

b. The duty of disclosure, including disseminating information to beneficiaries regarding the Plan and Trust assets in a manner that is truthful and not misleading; providing Plaintiffs the information they needed to exercise their rights and protect their interests under the Plan; providing accurate information; and not concealing information regarding the Plan and Trust;

c. The duty to monitor, including the responsibility to appoint, remove, and monitor performance of both fiduciary and non-fiduciary service providers to the Plan.

115. Defendants violated their fiduciary obligations to Plaintiffs through their acts and omissions, including but not limited to:

a. Failing to conduct a complete and impartial investigation of the problems posed by the underfunded status of the Plan and to investigate appropriate remedial action;

- b. Failing to evaluate the Plan's situation on an ongoing basis and take all necessary steps to ensure that the Plan's assets were preserved, funded and invested prudently and consistently with the Plan terms and objectives;
- c. Failing to loyally and prudently administer and manage the assets of the Plan;
- d. Failing to ensure that adequate funds would be available to pay the vested, accrued benefits promised to Plaintiffs under the Plan;
- e. Failing to provide complete and accurate information about the Corporation's contributions to the Plan and conveying, both through statements and omissions, inaccurate information regarding the Corporation's underpayments to the Plan and the underfunding of the Plan;
- f. Including misleading and inaccurate information concerning the Plan in the official and unofficial documents disseminated to Plaintiffs and other Plan participants;
- g. Including misleading and inaccurate information about the nature of the Plan, and whether it was subject to ERISA's protections, including PBGC insurance protection, in official documents disseminated to Plaintiffs and other Plan participants;
- h. Failing to adequately insure the Plan;
- i. Failing to reinstate ERISA coverage and PBGC insurance despite a unanimous vote by the Directors to do so;
- j. Withholding crucial, material information about the Plan's ability to pay Plaintiffs their vested and accrued benefits,

k. Failing to monitor appointees with respect to St. Clare's funding of the Plan and the investment of the Plan assets;

l. Failing to monitor or evaluate their appointees or to put in place a procedure to do so;

m. Failing to act when their appointees' imprudent actions and inaction caused the Plan to suffer enormous losses;

n. Failing to ensure that the monitored parties appreciated the true impact of the Corporation's funding practices and the likely impact of such practices on the Plan's ability to pay vested and promised retirement benefits;

o. To the extent any appointees lacked complete and accurate information necessary to make sufficiently informed decisions with respect to the Plan's assets, failing to provide them with such information;

p. Failing to ensure that the Plan paid no more than reasonable compensation for services provided to the Plan; and

q. Failing to remove appointees whose performance was inadequate and who breached their fiduciary duties by continuing to underfund the Plan despite their knowledge of substantial actuarial risks that the Plan would fail.

116. Defendants are also liable to the extent that they knew or should have known of the other Defendants' breaches of fiduciary obligations and either enabled, knowingly participated, or failed to take reasonable steps to remedy them.

117. Defendants' breaches have caused and will continue to cause the Plan, the Trust, and the Plaintiffs to sustain substantial losses.

118. As a direct and proximate result of Defendants' breaches of their fiduciary obligations, Plaintiffs suffered and will continue to suffer substantial monetary losses, and the Defendants are jointly and severally liable to restore those losses to the Plaintiffs as beneficiaries of the Plan.

VI. PRAYER FOR RELIEF

Wherefore, Plaintiffs request the following relief:


1. On all counts, compensatory, expectation, and punitive damages as against all Defendants, jointly and severally, in an amount to be determined after jury trial;
2. That this Court declare that the Corporation is and was a mere instrumentality of the Diocese, such that the Diocese is liable for Plaintiffs' damages;
3. An accounting of profits;
4. Disgorgement of profits that Defendants have received from assets obtained or not paid as promised;
5. Restitution;
6. An injunction directing Defendants to perform the obligations of its contract with Plan participants/Trust beneficiaries;
7. That this Court award to Plaintiffs reasonable costs and attorneys' fees as provided by law and/or pursuant to its general jurisdiction; and reasonable costs and interest; and
8. Any and all such other and further relief that to this Court may appear just and equitable.

Date: September 10, 2019

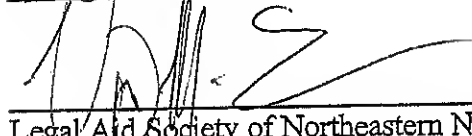

Brooklyn Legal Services

Attorneys for Plaintiffs Jeanette Bearzi, Mary Hartshorne, and Kelvin Isolda

Gary Stone, Esq., of counsel
Brooklyn Legal Services
105 Court Street, 4th Floor
Brooklyn, NY 11201
(646) 442-3316
gstone@lsnyc.org



David Pratt, Esq.
Attorney for Plaintiffs Patricia Caulfield, Colleen Dzikas, and Angela Stewart
80 New Scotland Ave.
Albany, NY 12208
(518) 472-5870
dprat@albanylaw.edu


Legal Aid Society of Northeastern New York
Attorneys for Plaintiffs Kelvin Isolda and Laurie Wasniski
Victoria M. Esposito, Esq., of counsel
95 Central Ave.
Albany, New York 12206
(518) 375-3460
vesposito@lasnny.org


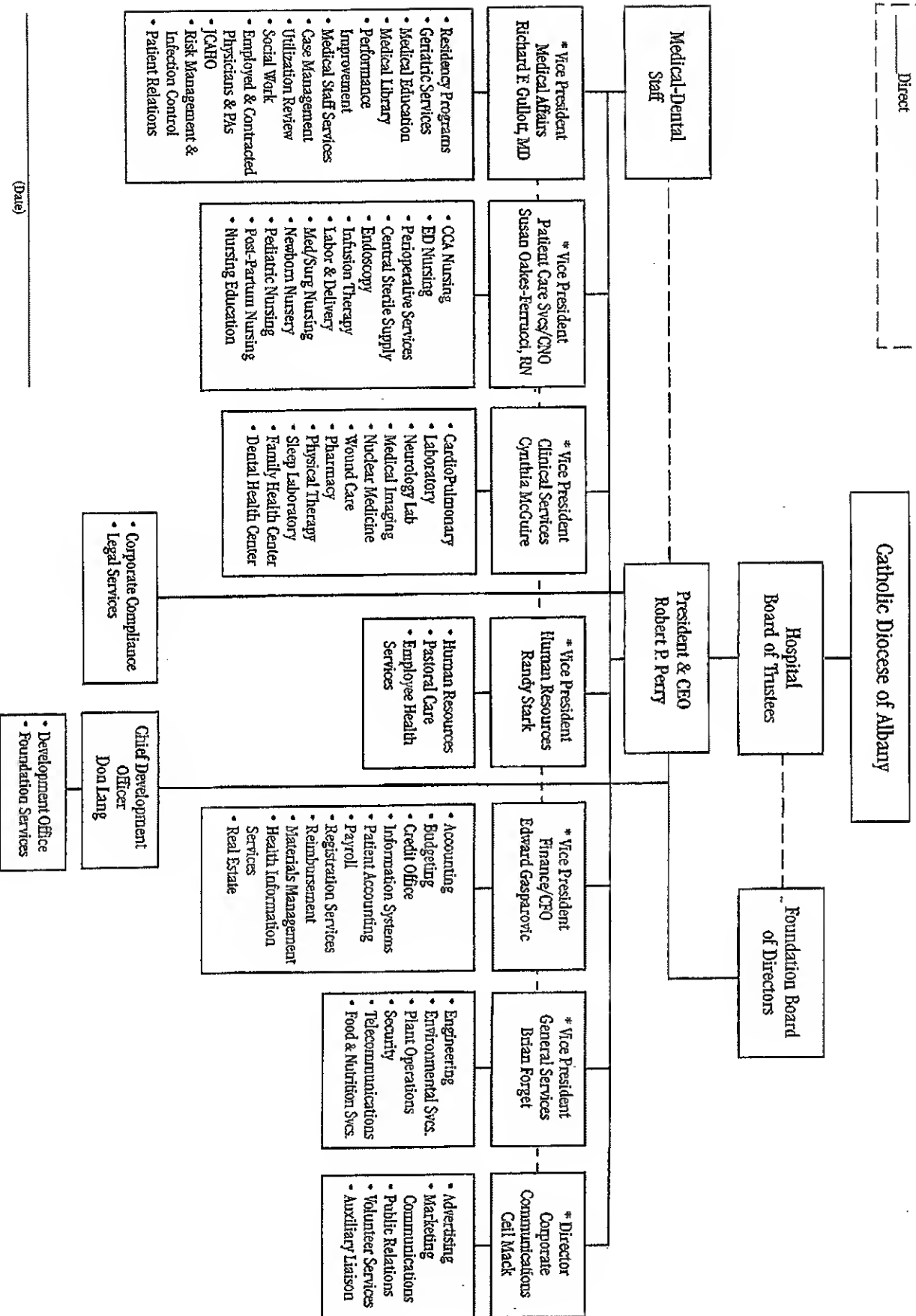

AARP Foundation
Attorneys for All Other Named Plaintiffs
Meryl Grenadier, Esq., of counsel
Dara Smith, Esq., on the papers, *pro hac vice* motion to be filed
601 E St NW
Washington, DC 20049
(202) 434-6280
mgrenadier@aarp.org
dsmith@aarp.org

EXHIBIT A

St. Clare's Hospital • Schenectady, NY Organizational Chart

- * Denotes Administrative Executive Committee
- ** Denotes direct report to Board of Trustees
- Communication
- Direct



(Date)

Robert P. Perry, President & CEO